



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/159524

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 05, 2014, at Milwaukee, Wisconsin.

The record was held open until September 18, 2014 to allow the Milwaukee Enrollment Services (the agency) to submit additional documentation showing how they calculated the amount of the overpayments. The record was then held open to allow Petitioner respond to anything submitted by the agency. Both Petitioner and agency provided additional exhibits for me to consider in my decision.

The issue for determination is whether the agency correctly determined that the Petitioner was overissued FS benefits, and if so, whether the overissuance was correctly calculated.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Pang Thao-Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner 3 Notices of FS Overissuance dated either July 21, 2014 or July 22, 2014. The notices informed Petitioner that she had been overissued FS as follows:
  - Claim # [REDACTED] \$5,026.00 05/01/2012 – 12/31/2012
  - Claim # [REDACTED] \$4,647.00 01/01/2013 – 12/31/2013
  - Claim # [REDACTED] \$2,975.00 01/01/2014 – 07/31/2014
3. Following the hearing the agency discovered that they had miscalculated 2 of the overpayments due to a transcription error. On September 10, 2014 the agency issued 2 new Notices of FS Overissuance.
  - Claim # [REDACTED] \$4,940.00 05/01/2012 – 12/31/2012
  - Claim # [REDACTED] \$5,053.00 01/01/2013 – 12/31/2013
4. Following the hearing, Petitioner submitted paystubs from [REDACTED]. Petitioner's paystubs match the paystubs submitted by the agency. The monthly gross income from the paystubs is correctly listed on the overpayment worksheets.
5. The basis for these FS overissuance claims was client error. Petitioner admits that she underreported her income to the agency.

### DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

In this case Petitioner admits that she underreported her income. Petitioner testified that she underreported her income because she believed that if she accurately reported her income she would become ineligible for childcare benefits. There is one system for reporting, so she underreported for both childcare and FS benefits.

The issue then is whether or not the agency correctly calculated the amount of overpayment. This agency believes that they overpaid just under \$13,000 in total. This is a significant amount. I have reviewed the agency's calculations and the documents submitted by both the agency and Petitioner. Both the agency and Petitioner submitted paystubs from [REDACTED]. The agency states that they found Petitioner's paystubs questionable as those paystubs reflect different rates of pay. A review of the paystubs submitted by both the agency and Petitioner show that Petitioner's paystubs are identical to the paystubs that the agency submitted. I reviewed the corrected monthly gross income on the agency's overpayment worksheets. I find that the monthly gross income used to calculate the overpayment is correct. In making this determination I considered that there were some very minor discrepancies during months where Petitioner worked a half an hour of overtime. These discrepancies benefit Petitioner, and would make little to no difference in the overpayment calculation. I further note that the agency stated that the overpayment would be even greater if they had used the state wage records. The agency appears to have given Petitioner every benefit of the doubt when calculating the overpayment in this case.

Petitioner submitted documentation following the hearing showing that she now pays \$252 in monthly childcare expenses. Dependent care expenses can be deducted when calculating a family's monthly FS allotment. However, these were not Petitioner's dependent care expenses at the time this overpayment occurred. At the time this overpayment occurred Petitioner was receiving childcare assistance. This was the reason she chose to underreport her income. Therefore, she would not be entitled to that deduction when calculating the overpayment. Petitioner did not dispute any of the other calculations the agency used.

### **CONCLUSIONS OF LAW**

The agency correctly determined that there was an overpayment due to Petitioner underreporting her income. The agency correctly calculated the overpayment amounts of \$4,940.00 from 5/1/2012 – 12/31/2012, \$5,053.00 from 1/1/2013 – 12/31/2013, and \$2,975.00 from 1/1/2014 – 7/31/2014

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of September, 2014

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 23, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability